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Recent Decisions - State and Federal: Solicitation Broadened

John Jeffrey Ross

Maryland Embraces Emotional Distress

by Andrea Gentile

Although plaintiff Harris did not prevail in his case, *Jones v. Harris,* 35 Md.App. 556, 371 A.2d 1104 (1977) saw the first direct judicial recognition of intentional infliction of emotional distress as an independent tort in Maryland.

Harris brought an action for damages against Jones and against General Motors Corporation alleging that Jones, while in the course of his duty as a G.M.C. supervisor, intentionally mimicked his (Harris') speech impediment, attempted to humiliate him with snide remarks, and continued to do so for an extended period of time with resulting emotional distress to Harris.

The tort of intentional infliction of emotional distress has been recognized for a number of years in California, Virginia and other jurisdictions. However, as this was a case of first impression in Maryland, the court first traced "The Interest In Freedom From Emotional Distress" from the 1934 Restatement of Torts which refused to recognize it as an independent tort, to PROSSER'S LAW OF TORTS (4th Edition) where the distinguished dean gave recognition to the tort and described its boundaries. General recognition of the tort was found, said the court, in 64 A.L.R. 2d 100 (dealing with emotional distress) where it is stated that the earlier case opinions which disallowed recovery for emotional distress alone should be treated as dicta. The trend is toward allowing recovery when there is severe emotional distress caused by an intentionally or recklessly committed, unprivileged act of the defendant, which was reasonably calculated to cause severe emotional distress to the plaintiff.

In *Great Atlantic & Pacific Tea Co.* v. *Roch,* 160 Md. 189, 153 A. 22 (1931), the court allowed damages for emotional distress suffered by the plaintiff and caused by the defendant's agent's delivery of a package containing a dead rat in lieu of the requested loaf of bread. The court based its decision on a negligence theory, concluding that the agent of the defendant had carelessly and negligently performed his duty by allowing the rat to be substituted for the bread. However, the *Jones* court said that in the *Roch* case the string was ". . . quite lightly tied . . ." to the tort of negligence, and they infer that the *Roch* and *Mahnke* v *Moore,* 197 Md. 61, 77 A.2d 923 (1951) (damages allowed where the father of a young child forced her to watch him murder her mother and then kill himself) were, in effect, cases of intentional infliction of emotional distress. The court concluded that the new tort would be viable in Maryland in a proper case. 35 Md.App. at 561, 371 A.2d at 1107.

The case of *Womack v. Eldridge,* 215 Va. 338, 210 S.E.2d 140 (1974) provided the guidelines used by the *Jones* court to determine when a cause of action would lie for emotional distress unaccompanied by physical injury. The elements outlined by the court are:

1. The wrongdoer's conduct is intentional or reckless. *Womack* held that, "this element is satisfied where the wrongdoer had the specific purpose of inflicting emotional distress or where he intended his specific conduct and knew or should have known that emotional distress would likely result." 35 Md. App. at 569-570, 1371 A.2d at 1108.
2. The conduct is outrageous to the extent that it offends the generally accepted standards of decency and morality.
3. There is a causal connection between the wrongdoer's actions and the emotional distress.
4. The emotional distress must be severe.

Harris provided testimony from a coworker as to Jones' conduct toward Harris, and it was probably based on that testimony that the court found that the first two elements were clearly met in the instant case. However, there was no evidence presented to show a causal connection between Jones' alleged harrassment and Harris' emotional distress. Testimony by Harris' wife pointed out that Harris' problems started at least seven months prior to the time Jones began his harrassment. Emotional distrurbance could be inferred by Mrs. Harris' testimony that in November, 1974 he was drinking heavily and threw a meat platter at her. Finally Harris' own testimony tended to refute his allegation of causal connection between his emotional disturbance and Jones' harrassment. He stated that he began seeking medical attention for his problems six years prior to this case.

With no evidence to support the third and fourth elements of the tort, Harris could not prevail. But the tort of intentional infliction of emotional distress is now alive in Maryland. Be kind to neighbors and co-workers.

Solicitation Broadened

by John Jeffrey Ross

Of no small consequence in local criminal jurisprudence is D.C. Code §22-2701, popularly known as the "solicitation statute":

> It shall not be lawful for any person to invite, entice, persuade, or to address for the purpose of inviting, enticing, persuading, any person or persons sixteen years of age or over in the District of Columbia, for the purpose of prostitution, or any other immoral or lewd purpose . . .

Nearly six percent of the arrests in the District of Columbia in 1975 were for commercial sex crimes and over 1100 of these were prosecuted by the U.S. Attorney. *See* J.D. Welsh and D. Viets, *The Pretrial Offender in the District of Columbia* (District of Columbia Bail Agency/Office of Criminal Justice Plans and Analysis, Washington, D.C. 1977).

The Metropolitan Police Department of the District is entitled to exercise considerable police power through this statute, which provides congressional assent to law enforcement activities

designed to pursue the "legitimate national, state, and community interest in maintaining a decent society." *See United States v. Moses,* 339 A.2d 46, 54 (D.C.App., 1975).

The District of Columbia Court of Appeals recently found the opportunity to consider this statute again in reviewing the conviction of Diane Dinkins. *Dinkins v. United States, 374 A.2d 292 (D.C. App., 1977).* In affirming this conviction, the court, sitting *en banc,* arrived at a construction of the statute which broadens considerably its reach and which some have found to be outrageous.

Diane Dinkins was standing on a corner in Washington, nattily attired in a red sweater, blue miniskirt, and knee length boots. Obviously impressed by Diane's sartorial display, a plain clothes police officer who had been cruising the area in his private car pulled near the sidewalk where Ms. Dinkins was standing. The officer rolled down his window and said "Hi" to Ms. Dinkins, who thereupon approached the car. A conversation ensued which consisted of typically loaded questions from the police officer and typically suggestive responses from Ms. Dinkins. The officer first asked how much the lady's services would be, and when Ms. Dinkins finally became explicit as to her repertoire, she was arrested. After her conviction in a bench trial, she appealed to the District of Columbia Court of Appeals. A division of this court decided to reverse the conviction. After the panel's opinion was circulated to the other judges on the court, the usual practice, a rehearing *en banc* was scheduled, and the full court affirmed.

The appellant claimed that "no solicitation [was] made for prostitution since Miss Dinkins conduct was responsive . . . rather than [initiatory]." 374 A.2d at 295.

The court disagreed, and in analyzing the wording of the statute noted that the word *solicit* does not specifically appear and thus its directive-active connotation as a gravamen of the offense was not applicable to §22-2701. 374 A.2d at 295. Instead, the court indicated (after research in Webster's Third New International Dictionary) that words such as "entice" and "address" which are present in §22-2701

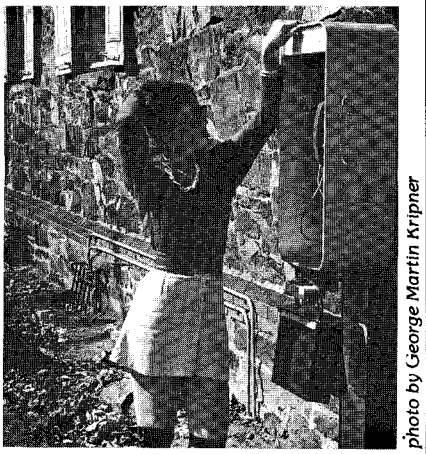

photo by George Martin Kripner

can describe conduct which is not necessarily active nor initiative in tenor. Through this analysis, which rivals the medieval philosophical speculation of the number of angels on the head of a pin, conduct which is responsive and even passive in reaction to a reasonably clever police officer can be proscribed by law.

The court stated its conclusion as follows:

> We hold that appellant's attire, her prolonged presence on the street corner, her approach to a complete stranger, her extremely suggestive verbal responses to the officer, her prompt discussion of financial terms, and her ready arrangement for a room are legally sufficient, when taken together, for a fact finder to conclude guilt beyond a reasonable doubt. 374 A.2d at 296.

The dissenting opinions noted that the Court of Appeals has interpreted the law as a *solicitation* statute. *Id.* at 297. The gist of the dissent was that "it must be affirmatively demonstrated that [she] invited, enticed, persuaded, or addressed . . . *for purposes of prostitution.*" *Id.* at 298 (emphasis in original). The minority indicated that the police officer's remarks themselves could well be taken to constitute violations of §22-2701. *Id.*

The second dissenting opinion stated:

> I had always thought that if a prostitute is merely standing on a corner she may not be convicted of [a violation] of this statute simply because she is a prostitute. Only if she solicits for prostitution may a conviction follow. I would have thought a construction of the statute was that simple, but now it seems that it is not. 374 A.2d at 299.

Don't Count Your Tuition Before You're Billed

by John Jeffrey Ross

In *Basch v. George Washington University,* 370 A.2d 1364 (D.C.App., 1977), the District of Columbia Court of Appeals considered a claim by plaintiff medical students that the defendant university breached its contract with them by charging tuition increases far exceeding those listed in the medical school bulletin.

The *George Washington University Bulletin: School of Medicine and Health Sciences,* published for the 1974-1975 year, listed estimated tuition increases of approximately $200.00 per year over the base tuition of $3200.00 for 1974-1975. Many students, according to appellants/plaintiffs, contended that their decision to attend George Washington was influenced by these estimated costs. When the university issued a "Statement of Tuition Rates" in January, 1975, revealing tuition costs far in excess of those outlined as estimates by the bulletin, the students complained in a suit in D.C. Superior Court. Treating a defendant's motion to dismiss as one for summary judgment, the trial court found that as a matter of law the students were not entitled to relief. The case was taken to the Court of Appeals.

The issue before the court was whether the university was to be contractually bound to projected tuition increases. The appellants renewed their claim that it was. Considering the fact that medical school tuition costs in the District have reached, or will reach $12,000 per year at George Washington and Georgetown universities, this claim on the part of the students was certainly an urgent one.

The court began its discussion by noting the general rule that terms set down in a university bulletin can become part of